

National referendum law sets rules of the game

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On March 15, 2001, members of the parliament of Ukraine cast 233 votes in favor of the bill «On the National Referendum». Two votes were cast against the bill, with 42 MPs who simply did not take part in the voting procedure, though were physically present in the session hall.

The whole 112-strong Communist faction demonstratively did not attend the session. The voting was also ignored by the factions of the Socialist party and the Batkivshchyna. Meanwhile, the bill - introduced by Oleksandr Lavrynovich (Rukh-Udoenko), Leonid Kuchma's official representative in the parliament Roman Bezsmertnyi (PDP) and Oleksandr Zadorozhnyi (Vidrodzhennya Rehioniv) - was supported almost unanimously by members of the Ukrainian People's Rukh (Kostenko), the Green party, the People's Democratic party, the SDPU(o), the Reforms-Congress, the Rukh (Udoenko), the Vidrodzhennya Rehioniv, the Trudova Ukraina, the Solidarity and the Yabluko.

The referendum law has had a rather complicated and dramatic history that fully reflects the tension provoked by the «number 1 event» of 2000, the April 16 referendum on amending the Constitution. On February 9, 2000, this draft was chosen out of three proposed options as the basis of the parliament's session that gathered to address the controversial referendum issue. The bill outlined issues that could be decided through a referendum. As the referendum, allegedly driven by the «people's initiative», drew near, provisions of the draft bill were enthusiastically debated and vigorously criticized. Serhiy Holovaty, MP, then argued that issues of changing laws may not be brought to the referendum, as that is entirely «the parliament's prerogative» (UNIAN, February 9, 2000). He stressed that changes to Articles 1, 3 and 13 of the Constitution might be a matter of referendum only after those articles were amended by the parliament. Interestingly, at that time, as on March 15, 2001, representatives of left-wing factions, and the whole Communist faction, were also missing the session. The issue of the referendum law was left pending.

Later on, after the April 2000 referendum emotions cooled down, the draft bill was approved in the first reading on November 29, 2000. At that point the fact caused neither anxiety nor joy in the parliament, no comments in the media. Similarly, the adoption of the referendum law on March 15 seemed to be unnoticed by the broader Ukrainian policy-making community and the media.

In order to approve the bill, votes of members of the «majority» were enough even though Yulia Tymoshenko's faction, the Batkivshchyna, formally still a collective member of the majority, did not vote. The voting results emphasized the dispersion of the majority and the disintegration symptoms in its structure. The voting also showed that votes of the left-wingers and the «red» will not be critical on many of «simple» issues, on which at least 226 votes are needed in order for a bill to be approved.

The general silent lack of interest and emotions suggest that attention to referendum and implementation ideas have gradually moved to the background of the current political developments. Even though the opposition demands a national referendum on issuing a no-confidence vote to President Kuchma, the issue of the referendum itself is perceived as secondary in the current political crisis. Meanwhile, the Socialist leader Oleksandr Moroz has repeatedly argued that the crisis will culminate in three months, and that «the current president will have to resign either after a referendum, initiated by the Verkhovna Rada, or after the impeachment procedure» (UTAR, Express-Inform, March 6, 2001).

According to the new referendum bill - not yet signed into law by President Kuchma - a national referendum can be called by the people's initiative, or initiated by the President of Ukraine or the Verkhovna Rada. The provision correlated with Article 72 of the Constitution, stipulating that «the national referendum is appointed by the Verkhovna Rada or the President of Ukraine in accordance with their authority, as specified by this Constitution.» The article stipulates that a referendum can be called following the «people's initiative» - «at the demand of at least 3 million citizens of Ukraine who are eligible to vote, provided that the signatures in support of the referendum have been collected in at

least two-thirds of the regions and at least 100 thousand signatures in each of the regions.» The provisions are fully reflected in the new law. Hence, in order to hold a national referendum - i.e., to use the «highest form of direct democracy, realization of free volition of citizens of Ukraine», as the law reads, it is necessary to collect 3 million voter signatures in at least two-thirds of the regions of Ukraine, with each of the regions producing at least 100 thousand signatures.

The national referendum may be initiated by an authorized «initiative group» of at least 20 Ukrainian citizens, selected by the assembly of at least 200 eligible voters. After the selection procedure the «initiative group» is to be formally nominated by chairman of the relevant local council for registration by the Central Election Commission (CEC).

The new law lists issues that may be brought to a national referendum: amendments to the Constitution (namely to Chapter 1, «General Provisions», Chapter 3, «Elections, Referendum», and Chapter 8, «Making Amendments to the Constitution of Ukraine»); changing Ukraine's territory (following relevant proposals of the president); on abolishing a certain law or its specific provisions. Meanwhile, Article 73 of the Constitution stipulates that the issues of changing the Ukrainian territory may be dealt with only by means of a national referendum.

The new law also enumerates some limitations on holding a national referendum, which also is in tune with the state's Fundamental Law. In particular, Article 74 of the Constitution stipulates that no referendum can be held on «issues of taxes, budget and amnesty». Holding a referendum is paid for from the state budget. The April 2000 referendum, for instance, according to the CEC chairman Mykhailo Ryabets, cost taxpayers over UAH 30 million. Since referendum is not seen as a kind of expensive massive opinion poll, it would be logical to make sure that the law specifies responsibility and liability for implementing the referendum results. However, the new bill sets no clear implementation framework. Importantly, the new law provides that a national referendum cannot be held earlier than one year after the previous referendum.

Before the new referendum rules were approved, Ukrainians used the law «On the National and Local Referenda» approved by the 1st parliament of Ukraine on July 3, 1991 and last amended in March 1993. Hence, the law was adopted and last amended well before the adoption of the current Constitution on June 28, 1996, and the lack of the up-to-date referendum law has been seen until recently as a major legislation gap. However, the lack of clear rules of the game, and the abundant criticism of the old law did not prevent President Kuchma and his supporters in the parliament from holding the referendum, regardless of the fact that its issues were described as controversial by both domestic opponents and international observers.

The new referendum law differs noticeably from the old one. First, it does not allow holding referenda on issues that directly or indirectly abolish or limit citizens' rights and liberties. Second, the referendum may not be held on issues of amending the constitution in a way as to abolish its independence or violate its territorial integrity. Article 5 of the old referendum law stipulated that «the national referendum should address issues referred by the Constitution to the authority of Ukraine. A national referendum would be the only answer to the issue of Ukrainian people's self-determination and Ukraine's accession to, or withdrawal from any state federative and confederate formations.

Since becoming an independent state about 10 years ago, Ukraine has experienced three national referenda. On March 17, 2001, Ukrainians could celebrate a noteworthy anniversary: a decade ago, in 1991, the Soviet referendum was held to provide an answer to the «to be or not to be» dilemma of «renewed» Soviet Union. Then Ukraine - unlike Georgia, Armenia, Moldova and the Baltic republics - did not boycott the general Soviet plebiscite. Apparently, the habit of trying to unite the incompatible expressed itself in the Ukrainians' voting patterns: 70.16% of eligible voters who took part in the referendum (of 80.17% of Ukraine's voters who attended the event) said yes to the existence of Ukraine within the Soviet Union - but based on the principles of the Declaration of State Sovereignty, adopted in July 1990.

However, at the end of 1991 Ukrainians had to take part in another referendum. Before, there was the August 1991 coup d'etat, and a few days later, on August 24, 1991, the Verkhovna Rada of Ukraine declared Ukraine's independence. On December 1, 1991, the Declaration of Independence of Ukraine was endorsed at a national referendum by 90.31% of those who came to the polling stations. All in all, 83.7% of Ukraine's eligible voters took part in the event.

Last year, the April 16 national referendum was designed to provide answers to four critical questions: (1) early termination of the parliament's term in case the parliament fails to form a majority within one month and/or adopt a budget within three months; (2) limiting the parliamentary immunity; (3) reducing the number of seats in the parliament from 450 to 300; and (4) creating a bi-cameral parliament. Under the conditions specified by the old referendum law, any voter having «good reason» to vote earlier than on the polling day was free to do so. No proof of the «good reason» was usually asked for. According to the nongovernmental Committee of Voters of Ukraine, by April 10, i.e., one week before the polling day, 8% to 15% of eligible voters had already expressed their opinions on the questions asked at the referendum (Vechirniy Kyiv, April 13, 2000). By the end of the pre-referendum week the number of early voters had reached 35% in some of the regions. Over 90% of eligible voters used their early vote right in the Kharkiv region. According to Chairman of the Central Election Commission Mykhailo Ryabets, the 50% attendance barrier needed to consider voting results as valid was achieved at all polling stations by noon. Generally, about 90% of eligible voters took part in the April 16 referendum; 85% of them answered positively to the first question, 89% supported the second question, 90% supported the third one, and 82% said yes to the fourth question of the referendum.

However, almost one year after the referendum, there is still no clear answer as to methods of implementing the referendum results, notwithstanding the efforts of numerous commissions trying to find the way for amending the Constitution to match its initiators' needs while sticking to the formally expressed «people's volition».

The issue of holding a national referendum in Ukraine raises a number of complex questions, primarily the problem of ensuring a transparent voting procedure and providing unbiased and accurate information about real motivation for having the referendum and cost-benefit analysis of potential consequences of voting results. Nowadays such a transparent information system, represented by genuinely independent (not state-owned and not engaged by affiliation with economic and/or political interests and influence groups) media is practically non-existent in Ukraine. In addition to legal «deadlocks», the lack of free media turns the general expression of the «public volition» into a massive farce. Given the instability and weakness of Ukraine's emergent democracy, opportunities to «form» the results and interpret them at liberty turns the referendum games into a pass-time that may be rather dangerous for the society.